1945

File No. Forest II/45

Legal Department

B Branch

Subject:— Rules and Notifications under the Indian Forest Act 1927.

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File No. Forest II/45

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Office of the R.L.A.

Government Notifications in the Revenue Department No. 9475, dated the 5th January 1925, page 41 ante, (slip U) and dated the 7th December 1925, page 53 ante, (slip J) issued under section 39(b) of the old Indian Forest Act, 1878 (VIII of 1878), since repealed, directed that a duty shall be levied on all timber and other forest produce mentioned in the 1st column of the Schedules appended to the said notifications, brought, in the case of the first notification, into the East and West ~~Zaha~~ Khandesh Districts from the Hyderabad, Indore and Barwani States, and in the case of the second notification, into the East Khandesh District from the Bhopal State - at rates as shown in columns 2 to 5 of the said Schedules, that is to say, according to the mode of conveyance. Since these columns 2 to 5 in the Schedules to the notifications do not prescribe the rates to be levied for timber brought in motor vehicles, which means of conveyance is now in general use, it is now proposed to levy the duty on timber brought in motor vehicles at rates based on the type and capacity of the vehicles used. On these facts the questions raised for the consideration of the R.L.A. are-

(1) whether this Government is competent to levy the said duty in virtue of sub-section (4) of section 39 of the Indian Forest Act, 1927; and ~~of section 39 of the Indian Forest Act, 1927; and~~

(2) if so, whether it is necessary obtain the approval of the Government of India.

2. Question (1). - Sub-section (1) of section 39 of the Indian Forest Act, 1927 (XVI of 1927) as adapted by the Adaptation Order vests the power to levy a duty on all timber or other forest produce which is brought from any place outside British India, in the Central Government. Sub-section (4) of the said section, however, goes on to provide that notwithstanding anything in that section, the Provincial Government may, until provision to the contrary is made by the Central Legislature, continue to levy any duty which it was lawfully levying before the commencement of Part III of the Government of India Act, 1935, under that section as then in force. The proviso to the said sub-section is irrelevant for the purposes of the present reference. The adaptation gives effect to section 143(2) of the Government of India Act, 1935.

3. Government Notifications No. 9475, dated the 5th January 1925 (page 41) and 7th December 1925 (page 53), which were issued with the previous sanction of the Governor General in Council, imposed a duty on all timber and other forest produce mentioned in the first column of the Schedules appended to the said notifications. The Provincial Government which was lawfully levying this duty before 1st April 1937, can continue to levy it under new sub-section (4) of section 39. The power given under sub-section (4) is ef- with reference to any duty levied. It is no

no doubt true that columns 2 to 5 of the Schedules to the said notifications specify the rates at which the said duty is to be levied according as the timber or other forest produce is brought in a cartload, in a bullock-load, in a donkey-load or a head-load. The proposal is now to levy the same duty on the import of timber and other forest produce brought in motor vehicles. It will be noticed that the rates proposed to be levied on these imports by means of motor vehicles is strictly based on the carrying capacity of the motor lorries in cartloads (vide protion A-A in the Chief Conservator's letter at page 134). In an analogous case the Advocate General has, in his opinion dated 22-12-1937 and his opinion No. 21 dated 20th June 1940 held that it was competent to the Provincial Government in such cases even to increase the rate of duty. In this case what is contemplated is merely to convert the rate on import by cartloads into a rate on import by motor lorries. Since the form of the duty has been saved by sub-section (4) of section 39 (read with section 143(2) of the Government of India Act, 1935), it appears competent to the Provincial Government to levy duty on the import of timber and other forest produce brought in motor vehicles, from the States concerned.

4. Question (2).- Since sub-section (1) of section 39 of the Indian Forest Act, 1927, the proviso to which required the previous sanction of the Governor General in Council, has been adapted into the present sub-section

(1) which vests the power to levy the said duty in the Central Government, and since sub-section (4) of section 39 gives the power ~~to levy the said duty in the Central Government, and since sub-section (4) of section 39 gives the power~~ of levying a duty in a case like the present to the Provincial Government without any limitation, there is no question of obtaining the previous sanction of the Central Government to the proposed levy. However, it is administratively desirable and legally safer to obtain the concurrence of the Central Government before the proposed levy is made.

5. The draft notification at page 139 is not in order since it overlooks the fact that the present notification at p. 53 ante refers only to East Khandesh district but not to West Khandesh district. A revised draft notification amending Government Notifications, Revenue Department, No.9475, dated 5th January and 7th December, 1925 is sent herewith.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 1340 dated 14th February, 1945.

SSM / 16/7/56.

Revenue Department.

Bombay Castle, 1945.

Indian Forest Act, 1927.

No. In exercise of the powers conferred by sub-section (4) of section 39 of the Indian Forest Act, 1927 (XVI of 1927), the Government of Bombay is pleased to amend Government Notifications in the Revenue Department, No. 9475, dated the 5th January 1925, and 4th December 1925, with effect from ..... as follows, namely:-

(i) for the figures and word "2 to 5" in each of the said notifications, the figures and word "2 to 7" shall be substituted: and

(ii) in the Schedule to each of the said notifications, under the head "Rates of duty per", the following sub-heads and columns shall be added, namely:-

Load in Motor vehicle of 1 ton capacity.	Load in Motor vehicle of 1½ tons capacity.
6	7
Rs.	Rs.
9	12
2	3
12	20
6	8
6	8

By order of the Governor of Bombay,

Secretary to Government.

SSM / 16/7/561

Indian Forest Act, 1927.

Notification.

Revenue Department.
Bombay Castle, 1945.

No. In exercise of the powers conferred by sub-section (4) of section 39 of the Indian Forest Act, 1927 (XVI of 1927), the Government of Bombay is pleased to amend Government Notifications in the Revenue Department, No. 4475, dated the 5th Januury 1925, and 7th December 1925, with effect from .....1945, as follows, namely :-

After the Schedule to each of the said notifications the following note shall be added, namely:-

For the purpose of the above rates of ~~duty~~ motor vehicles of 1 ton and 1½ tons capacity shall each respectively be deemed to contain three and four cartloads, except that in the case of firewood each shall respectively be deemed to contain four and six cartloads and in the case of bamboos, a motor vehicle of 1½ tons capacity shall be deemed to contain five cartloads."

By order of the Governor of Bombay,

Secretary to Government.

SSM / 16/7/56.

Office of the R.L.A.

Section 39(4) of the Indian Forest Act, 1927 (XVI of 1927), does not empower Government to levy duty with retrospective effect. It is a general principle that a taxing law cannot impose pecuniary burden upon the subject with retrospective effect. No amendment of the notifications referred to can be made so as to be operative from a date prior to the date of notification amending the main notifications.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 8328, dated the 8th November 1945.

SSM / 16/7/56.